

INTO A COMPREHENSIVE TAX TREATY WITH THE UNITED STATES GOVERNMENT included the interest expense or intangible expense received by the related member from the corporation; and

3. the aggregate effective tax rate imposed on the amounts received by the related member is equal to or greater than 4%; or

(iii) in the case of an interest expense, the corporation and the related member are banks.

(d) (1) Subject to regulations adopted by the Comptroller, the addition required under subsection (b) of this section does not apply if, in lieu of the 4% effective tax rate requirement under subsection (c)(3)(ii)3 of this section, the aggregate effective tax rate imposed on the amounts received by the recipient is greater than or equal to the aggregate effective tax rate that would have been imposed on the additional income of the payor corporation if the interest expense or intangible expense had not been deducted.

(2) For purposes of subsection (c)(3)(ii) of this section, the Comptroller may provide by regulation for an alternative to the effective tax rate requirement of subsection (c)(3)(ii)3 of this section if:

(i) the related member:

1. is subject in another state OR IN A FOREIGN NATION THAT HAS ENTERED INTO A COMPREHENSIVE TAX TREATY WITH THE UNITED STATES GOVERNMENT to a tax that is measured by gross receipts or is measured by net capital or net worth; and

2. is not subject in that state OR IN THAT FOREIGN NATION to a tax measured by net income or receipts; or

(ii) under other circumstances demonstrating to the satisfaction of the Comptroller that avoidance of any portion of the tax due under this title is not a principal purpose of the transaction giving rise to the payment of the interest expense or intangible expense between the corporation and the related member, the Comptroller determines that it is impractical for a related member that is subject to tax in this State [or], another state, OR A FOREIGN NATION THAT HAS ENTERED INTO A COMPREHENSIVE TAX TREATY WITH THE UNITED STATES GOVERNMENT, where the measure of the tax includes the payment to satisfy the requirements of subsection (c)(3)(ii) of this section.

(e) If the payor and the recipient are both included in a combined or consolidated report filed in a jurisdiction:

(1) for purposes of subsection (c)(3)(ii)2 of this section, the measure of the tax imposed by that jurisdiction shall be deemed to include the interest expense or intangible expense; and

(2) for purposes of determining the effective rate of tax imposed by the jurisdiction, the applicable apportionment rate is the lesser of: